

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSE ENRIQUE NUÑEZ, III,
Plaintiff,

v.

WARDEN JANINE QUIGELY, *et al.*,
Defendants.

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: CIVIL ACTION NO. 18-CV-4492
: FILED
: NOV 19 2018
: KATEA W. CLARK
By _____ Dep. Clerk
ORDER

AND NOW, this 19th day of November, 2018, upon consideration of *pro se* Plaintiff Jose Enrique Nuñez, III's Motions for Leave to Proceed *In Forma Pauperis* (ECF Nos. 4, 6), his Prisoner Trust Fund Account Statements (ECF Nos. 5, 7), and his Complaint (ECF No. 1), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915(b).
2. Nuñez, #2016-0705, shall pay the full filing fee of \$350.00 in installments, pursuant to 28 U.S.C. § 1915(b). Based on the financial information provided by Nuñez, he is not assessed an initial partial filing fee. In each month when the amount in Nuñez's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official at the Berks County Jail System or at any other prison at which Nuñez may be incarcerated shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Nuñez's inmate trust fund account until the fees are paid. Each payment shall reference the docket number for this case, Civil Action No. 18-4492.
3. The Clerk of Court is **DIRECTED** to send a copy of this Order to the Warden of the Berks County Jail System.

4. The Complaint is **DEEMED** filed.
5. The Complaint is **DISMISSED without prejudice** for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), for the reasons set forth in the Court's Memorandum.
6. Nuñez is given leave to file an amended complaint within thirty (30) days of the date of this Order in the event he can state a plausible basis for a constitutional claim. Any amended complaint shall name all defendants in the caption of the amended complaint and should state how each defendant was responsible for violating Nuñez's rights. The amended complaint should not rely on or refer to the initial Complaint to state a claim. If Nuñez cannot state a claim in light of the law set forth in the Court's Memorandum, he should not include that claim in his amended complaint. Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED**.
7. The Clerk of Court is **DIRECTED** to send Nuñez a blank form complaint to be used by a prisoner filing a civil rights action bearing the civil action number for this case.
8. If Nuñez fails to file an amended complaint, his case may be dismissed for failure to prosecute without further notice.

BY THE COURT:



GERALD A. MCHUGH, J.